

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL UNION OF)	
OPERATING ENGINEERS,)	
LOCAL 2,)	Public Case No. AC 2000-048
)	
Petitioner,)	(Cross Reference UC 1997-034,
)	R 1977-005, R 1976-045,
v.)	R 1981-032, & TA 1997-031)
)	
MISSOURI DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This matter appears before the State Board of Mediation upon the filing of a petition by the International Union of Operating Engineers, Local 2 (hereinafter referred to as Local 2) requesting amendment of its certification as bargaining representative of certain employees of the Missouri Department of Transportation (hereinafter referred to as MoDot) to read the Missouri State Branch of Operating Engineers (hereinafter referred to as the Missouri State Branch). MoDot opposes the amendment of certification. A hearing on the matter was held on September 12, 2000, in Jefferson City, Missouri, at which representatives of Local 2 and MoDot were present. The case was heard by State Board of Mediation Chairman John Birch and Employer Member Lois VanderWaerdt. At the hearing, the parties were given full opportunity to present evidence and make their arguments. Afterwards, the parties filed briefs. The case transcript and briefs were subsequently supplied to Employee Member LeRoy Kraemer who participated in the Board's decision. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

On October 12, 1977, Local 2 was originally certified as the exclusive bargaining representative for certain MoDot employees (public Case No. 77-015). Local 2 is affiliated with the International Union of Operating Engineers. Local 2 has approximately 2000 dues-paying members and represents approximately eighty bargaining units. Except for the MoDot bargaining unit, Local 2's geographical jurisdiction is generally limited to the eastern half of the State of Missouri. Nearly all of Local 2's members reside in eastern Missouri or southern Illinois. Seven hundred of Local 2's members are located within forty miles of the City of St. Louis. Local 2's efforts are, therefore, concentrated in the St. Louis, Missouri area. For the most part, Local 2 represents employees within the stationary engineer job classification. These employees operate and maintain stationary equipment, as in power plants. Local 2 also represents employees in the pipeline industry and the heating and air conditioning industry. Local 2 represents some employees who operate heavy construction equipment. These employees include the MoDot bargaining unit and approximately two hundred county highway employees.

Local 2 has one business office located in St. Louis, Missouri. Local 2 maintains its own books and financial assets. Additionally, Local 2 has its own by-laws. These by-laws must be consistent with the constitution of the International Union of Operating Engineers and must be approved by the International Union. No local union's by-laws may abrogate rights guaranteed its members under the constitution of the International Union.

Local 2 has its own local union officers. The current officers are Fred Simshuaser, President; Joseph Cortopassi, Vice President; Stephen Gregali, Financial Secretary; Harry Chomin, Treasurer; and Vergil Belfi, Recording Secretary and Business Manager. Local union officers are elected by the local union membership every three

years. Local 2 also has auditors, three trustees, and seven business agents. Five of Local 2's business agents are located in the City of St. Louis, Missouri. The other two business agents are located outside of the State of Missouri.

The MoDot bargaining unit is the only statewide bargaining unit represented by an affiliate of the International Union of Operating Engineers within the State of Missouri. As of June 20, 2000, the MoDot bargaining unit was comprised of approximately 2,180 employees. These employees work at approximately 350 different MoDot facilities throughout the State of Missouri. Of the 2,180 employees in the MoDot bargaining unit, only 27 are members of Local 2. The 27 members are located in four of MoDot's ten Districts: eleven from the Sikeston District; seven from the Willow Spring's District; one from the Joplin District; and eight from the Kansas City District. The number of union members within the MoDot bargaining unit has fluctuated over the years.

Local 2 attempts to hold regularly scheduled monthly meetings with its MoDot membership. However, given the fact that these members are dispersed throughout the state, it is difficult to arrange such meetings. This fact has also made it difficult for Local 2 to employ a sufficient number of business agents to service the MoDot bargaining unit. This was one factor which led Local 2 to search for a more efficient and economical way to represent members of the MoDot bargaining unit.

Since it was certified as the exclusive bargaining representative of the MoDot bargaining unit, Local 2 has held meet-and-confer sessions with representatives of MoDot. Since 1990, Richard Millard, Director of Human Resources for MoDot, has been in charge of labor relations for MoDot. Mr. Millard has been MoDot's team leader in the meet-and-confer sessions with Local 2. As for Local 2, Vergil Belfi (or one of the business agents assigned by Mr. Belfi) has handled these meet-and-confer sessions. Over the years, a number of Local 2 business agents have been assigned to represent Local 2 at the meet-and-confer sessions. The latest Local 2 business agent to attend

the meet-and-confer sessions is Stephen Gregali. Mr. Millard of MoDot testified that he was willing to meet-and-confer with any representative from Local 2.

Whenever an agreement was reached between Local 2 and MoDot, a Memorandum of Understanding (MOU) was drafted. Any MOU negotiated between Local 2 and MoDot had to be voted on by the employees in the MoDot bargaining unit. The MOU also had to be approved by the Missouri Highway Commission. Vergil Belfi would sign the MOU on behalf of Local 2. The last MOU negotiated between Local 2 and MoDot was three years in duration and expired on June 30, 2000.

As part of the meet-and-confer sessions, Local 2 and MoDot negotiated a grievance procedure that was incorporated into the MOUs. The grievance procedure outlined certain steps that had to be followed by the parties. At certain key steps in the process, the employee has a right to have a union representative present. Vergil Belfi, Local 2's Business Manager, may assign any one of Local 2's business agents to handle the grievance. Additionally, in cases of informal complaints, a Local 2 business agent calls the MoDot Director of Human Resources, Richard Millard, directly. Mr. Millard and the business agent take whatever steps they deem appropriate to resolve the problem.

Until a few years ago, the International Union of Operating Engineers had six affiliated local unions in the State of Missouri: Local 2, Local 6, Local 16, Local 101, Local 148, and Local 513. Approximately four years ago, Local 6 was merged into Local 101. Approximately one year ago, Local 16 was also merged into Local 101. Following these mergers, Local 101 was the surviving local union. The local unions are parochial in nature. Each local union has an assigned geographical jurisdiction. In addition to having a separate geographical jurisdiction, each local union represents employees in specific job classifications. As noted previously, Local 2 generally represents stationary equipment employees. If Local 2 were involved in a job that required the use of heavy

equipment to remove hazardous material, Local 2 would request the assistance of a sister local with individuals trained and skilled in the use of such heavy equipment.

In an attempt to coordinate activities and more effectively represent their respective members, the affiliated local unions of the International Union of Operating Engineers located in Missouri formed the Missouri State Branch of the International Union of Operating Engineers. The local unions drafted by-laws for the Missouri State Branch. On July 9, 1987, a representative from each of the affiliated local unions signed the by-laws. Thereafter, the by-laws were approved by the International Union of Operating Engineers. On January 29, 1992, the International Union of Operating Engineers issued a branch charter to the Missouri State Branch. Vergil Belfi of Local 2 served as the first president of the Missouri State Branch. Following the formation of the Missouri State Branch, all of the affiliated local unions remained separate entities and continued to represent their bargaining units. The local unions also maintained their Local union officers, facilities, books, and financial assets. However, as noted previously, three of the affiliated local unions (Local 6, Local 16, and Local 101) have since merged and the surviving local union is Local 101.

Since its inception, representatives of the Missouri State Branch affiliated local unions have met regularly each calendar quarter to discuss topics of common interest, discuss common problems, and conduct branch business. Some of the local unions have contracts that span more than one geographical jurisdiction or which affect other affiliated local unions. At the Missouri State Branch quarterly meetings, the local union representatives report on activities with regard to these contracts. Since the MoDot bargaining unit encompasses all of the affiliated local union's geographical jurisdictions, Local 2 discusses matters concerning the MoDot bargaining unit. Any decisions made at these quarterly meetings by the affiliated local unions that affect International Union policy must be approved by the International Union.

The Missouri State Branch's current officers are Nathan Broccord, President; Roger Kaminska, Vice President; and Don Giljum and Vergil Belfi, Secretaries. The Missouri State Branch also has Trustees. Vergil Belfi serves as a Trustee of the Missouri State Branch. Despite the fact that the Missouri State Branch has held regular quarterly meetings, the Branch has never represented a bargaining unit or negotiated a bargaining agreement.

Another factor in Local 2 seeking the amendment of jurisdiction is its desire to make training through other State Branch affiliated Local Unions available to the employees in the MoDot bargaining unit. The employees in the MoDot bargaining unit operate heavy construction equipment such as dump trucks and tractors. Since Local 2 represents primarily stationary equipment employees, it has no training programs regarding heavy construction equipment. However, Local 101 and Local 513 both have heavy equipment apprenticeship programs. Both of these local unions maintain training facilities in Missouri where individuals can be trained in the safe operation of heavy equipment. By amending the certification to read Missouri State Branch, the training programs and facilities of Locals 101 and 513 would be available to the employees in the MoDot bargaining unit.

Early in 1999, Mr. Belfi spoke with Richard Millard, Director of Human Resources for MoDot, concerning training programs available through the International Union of Operating Engineers. Mr. Millard was interested in the types of training programs that could be provided by the Operating Engineers. Thereafter, Howard Mills, Regional Director of the International Union, and Harold Bottoms, Regional 2 International Representative for the International Union, met with Richard Millard concerning training available through the union. At that time, Mr. Millard explained that MoDot was contemplating major expansion in its training programs. He also explained that MoDot was in the process of hiring a new Director of Employee Development and it was

investigating the possibility of outsourcing a portion of its employee training. Mr. Millard again expressed interest in the union training programs and agreed to listen to more information.

In December 1999, the International Union of Operating Engineers gave a presentation concerning its training programs to MoDot personnel. This presentation was held at MoDot headquarters in Jefferson City, Missouri. Sometime after the presentation, Mr. Bottoms and Mr. Mills again met with Mr. Millard and offered to give MoDot representatives a tour of one of the Operating Engineers' training facilities. Mr. Millard accepted the offer of a tour. In May 2000, Jim Paisley of MoDot, one of Mr. Paisley's assistants, and Doug Smentkowski of the Office of Administration, accompanied Mr. Bottoms to Local 513's Apprentice Training Facility.

On February 23, 2000, Local 2 filed a petition with this Board to amend the certification originally granted to it in Case No. 77-015 to read the Missouri State Branch of Operating Engineers. Local 2 compiled a list of union members belonging to the MoDot bargaining unit for use in an election concerning the amendment of certification. Prior to the election, each Local 2 member that was a part of the MoDot bargaining unit was contacted. Business agents from Local 2 visited each member at his or her place of work to discuss the issue and to deliver a letter requesting the member's support for the amendment of certification. These visits were consistent with the business agents' common practice of visiting MoDot union members at the "sheds." Additionally, regular membership meetings were held where members had an opportunity to raise and discuss the amendment of certification.

Following these discussions, each member was again visited at his or her place of work by Local 2 business agents who delivered to each member a voting packet. The voting packet included a ballot which stated as follows:

INTERNATIONAL UNION OF
OPERATING ENGINEERS

OFFICIAL BALLOT

I am a member in good
standing of the International
Union of Operating Engineers,
Local 2 employed with the
Missouri Department of Transportation.

Concerning the petition before
the Missouri Board of
Mediation to Amend the
Certification which designates
the exclusive representative, I
am voting as follows:

Mark one:

_____ *Change the Certification to read
"the Missouri State Branch of
Operating Engineers."*

_____ *Certification to remain with Local 2.*

Each voting packet also included a statement which was to be signed and dated
by the member attesting to the fact that he or she voted in private and that the ballot, as
marked, represented his or her personal decision. The statement provided as follows:

To Whom It May Concern:

My signature below attests that I have voted my ballot in the
election to change the Certification from Local 2 to the Missouri State
Branch of the Operating Engineers. My choice was made in private and
represents my personal election.

Each member took his or her ballot to a private area and voted. Each member
then sealed his or her marked ballot in an unmarked, unsigned envelope. Then, each
member signed and dated the statement attesting that he or she voted in private. The
sealed ballot and signed statement were then sealed in a second envelope and the
member signed his or her name in the lower, left-hand corner of this outer envelope.
The members' signatures were required on the outer envelopes to ensure that each

member voted only once. Each member could choose to vote immediately and hand the sealed ballot to the business agents or each member could choose to keep the ballot, vote at some later date, and mail the ballot to the Operating Engineers.

Mr. Bottoms, of the International Union, was in charge of collecting all of the ballots. A representative of the State Board of Mediation was present when the ballots were counted. First, the outer envelopes in which the ballots were sealed were opened. The ballots, still sealed in the unsigned ballot envelopes, were placed together. Then, the ballots were opened and the votes tallied. The vote was 22 in favor of amendment of certification and none opposed. At the time the votes were counted, the representative from the State Board of Mediation expressed no concerns regarding the balloting process. Furthermore, the International Union of Operating Engineers has received no complaints concerning the balloting process.

Upon amendment of the certification, the Missouri State Branch will meet-and-confer with MoDot on behalf of the MoDot bargaining unit. The four local unions affiliated with the Missouri State Branch will jointly hire and pay one individual who will be primarily responsible for the MoDot bargaining unit. This individual will coordinate all activities regarding the MoDot bargaining unit including negotiating an MOU, administering any MOU, and handling grievances. This individual will lead the negotiations for the MoDot bargaining unit. Additionally, a representative from each of the Missouri State Branch affiliated local unions will take part in the negotiations. Any MOU that is negotiated will have to be voted on by the employees in the MoDot bargaining unit. A representative from each of the State Branch affiliated local unions will also sign the MOU.

Additionally, each Missouri State Branch affiliated local union will hire a representative to handle MoDot bargaining unit matters within their respective geographical jurisdictions. These individuals will be responsible for handling matters

such as grievances. However, they will coordinate their activities through the individual hired to be primarily responsible for the MoDot bargaining unit.

Following the amendment of certification, all individuals in the MoDot bargaining unit who are currently members of Local 2 will remain members of Local 2. However, all new union members will join the particular affiliated local union that has geographical jurisdiction over the area in which they are located. All union members will retain all rights granted to them by the constitution of the International Union of Operating Engineers. They will continue to vote on local union officers every three years. Union dues will remain the same.

Likewise, Local 2 will remain a separate entity. Local 2 will have all the rights guaranteed to it by the constitution of the International Union of Operating Engineers. It will still have its own by-laws. Local 2 will retain its local union officers. It will retain its own facilities, books, and financial assets. Local 2 will also continue to represent all of its other bargaining units.

CONCLUSIONS OF LAW

The International Union of Operating Engineers, Local 2 petitioned this Board to amend the certification originally granted to it in Case No. 77-015 to read the Missouri State Branch of Operating Engineers. 8 CSR 40-2.055(1) provides as follows:

The certified representative or the public employer may file a petition for Amendment of Certification. Petitioner seeks an amendment to reflect changed circumstances (such as merger or affiliation) in a unit covered by certification and where no question concerning representation exists.

In *Kansas City Association of Educations Officer Personnel (KCAEOP) v. Kansas City School District*, Case No. 91-012 (SBM, 1991), this Board set forth the legal standard to be used in granting or denying an amendment of certification. In deciding to grant or deny an amendment of certification, the Board examines the facts in each case to determine (1) whether or not there is substantial continuity of the bargaining

representative and (2) whether or not the election concerning the amendment of certification was conducted with adequate "due process" safeguards. *See, Id.* at 6. *See also, Professional Fire Fighters' Association of Clayton and International Association of Fire Fighters, Local 2665 v. City of Clayton*, Case No. 91-019 at 5 (SBM 1991). In *Kansas City Association of Educations Officer Personnel (KCAEOP) v. Kansas City School District*, *supra* at 6-7, this Board also set forth a list of factors it would review in making these determinations. However, "the Board's analysis, rather than being mechanistic and using a strict check list, [should be] directed at analyzing the totality of circumstances in order to give paramount effect to employees' desires." *Sullivan Brothers Printers, Inc.*, 317 NLRB 561, 563, 149 L.R.R.M. 1217 (1995).

As with any organization, structural changes within unions are natural and foreseeable. However, every structural change does not automatically raise a question of representation. "[T]he notion that an organization somehow loses its identity and becomes transformed ... because it acquires more clout and becomes better able to do its job is an absurdity...." *Id.* Furthermore, in cases such as this one, the issue of whether or not a question of representation exists is a factual issue to be determined by this Board. *See, Minn-Dak Farmers Cooperative v. NLRB*, 32 F.3d 390, 393 (8th Cir., 1994).

MoDot, as the party opposing the amendment of certification, bears the burden of proving lack of continuity of the bargaining representative and proving that the election concerning the amendment of certification was not conducted with adequate due process safeguards. *See, Sullivan Brothers Printers, Inc.*, 317 NLRB at 562. In this case, MoDot has failed to carry its burden of proof.

As a preliminary point, MoDot argues that 8 CSR 40-2.055 only permits the filing of a petition to amendment of certification in cases where there are changed circumstances in the bargaining unit. The Board notes that 8 CSR 40-2.055 was

originally filed on May 3, 1999, and became effective November 30, 1999. The regulation has not been interpreted by this Board or by the Missouri Courts. However, the interpretation placed on the regulation by MoDot is contrary to decisions of this Board, the National Labor Relations Board, and the federal courts. A petition for amendment of certification is the proper vehicle to use in cases where the exclusive bargaining representative has affiliated with another union, *Kansas City Association of Educations Officer Personnel (KCAEOP) v. Kansas City School District*, Case No. 91-012 (SBM, 1991); *Professional Fire Fighters' Association of Clayton and International Association of Fire Fighters, Local 2665 v. City of Clayton*, Case No. 91-019 at 5 (SBM 1991); *NLRB v. Financial Institution Employees of America, Local 1182*, 475 U.S. 192, 106 S.Ct. 1007, 89 L.Ed.2d 151 (1986), merged with another union, *Montgomery Ward & Co.*, 188 NLRB 551, 76 L.R.R.M. 1364 (1971), or in cases where a union seeks transfer of a certification. *Duquesne Light Company*, 248 NLRB 1271, 104 L.R.R.M. 1043 (1980). A petition for unit clarification is the correct vehicle to use when there has been changed circumstances in the bargaining unit. *International Association of Fire Fighters, Local 2543 v. Poplar Bluff Fire Department*, Case No. UC 2000-019 at 10 (SBM 2000). Therefore, the Board specifically holds that the filing of a petition for amendment of certification is proper under 8 CSR 40-2.055 where the exclusive bargaining representative has affiliated with another union, merged with another union, or seeks to transfer its certification. The filing of a petition to amend certification was proper in this case.

We will now turn to the issue of continuity of the bargaining representative. In 1977, Local 2 was originally certified as the exclusive bargaining representative for the MoDot bargaining unit. However, Local 2's jurisdiction is primarily the eastern half of the State of Missouri and Local 2 has concentrated its efforts in the City of St. Louis. The MoDot bargaining unit, on the other hand, is a statewide bargaining unit whose members

are located in approximately 350 MoDot facilities across the state. Understandably, this dispersion of the employees in the MoDot bargaining unit makes it difficult for Local 2 to provide services to the bargaining unit. Additionally, the union desires to make training through the Missouri State Branch affiliated local unions available to the MoDot bargaining unit. Therefore, the union decided that it could best serve the MoDot bargaining unit through the Missouri State Branch.

The amendment of certification will not greatly affect the individual union members. All individuals in the MoDot bargaining unit who are currently members of Local 2 will remain members of Local 2. However, all new union members will join the particular affiliated local union that has geographical jurisdiction over the area in which they are located. All union members will retain all rights granted to them by the constitution of the International Union of Operating Engineers. They will continue to vote on local union officers every three years. Union dues will remain the same.

The amendment of certification will not substantially change the current bargaining process. Since Local 2 was certified as the bargaining representative for the MoDot bargaining unit, it has had a number of different individuals attend the meet-and-confer sessions with MoDot. Most recently, Local 2 business agent Stephen Gregali has met and conferred with MoDot. Therefore, MoDot should be accustomed to periodic changes in the union representatives negotiating with the Department. Further, Mr. Millard, Director of Human Resources for MoDot, testified that he was willing to meet-and-confer with any representative of the current bargaining representative. Therefore, it should make little difference to MoDot whether that individual is a representative of the Missouri State Branch or Local 2.

Upon amendment of the certification, the Missouri State Branch will meet-and-confer with MoDot on behalf of the MoDot bargaining unit. The Missouri State Branch, through the four affiliated local unions, will hire one individual to coordinate all activities

regarding the MoDot bargaining unit including meeting and conferring with MoDot. This individual will lead in negotiating with MoDot on behalf of the MoDot bargaining unit. Stephen Gregali, the current Local 2 business agent currently attending the meet-and-confer sessions with MoDot, could be the individual hired by the Missouri State Branch to lead in the negotiations with MoDot. In that case, the MoDot bargaining unit would be represented at the meet-and-confer sessions by the exact same individual. Additionally, each Missouri State Branch affiliated local unions, including Local 2, will have a representative at the bargaining table. Therefore, the MoDot bargaining unit will have at least one Local 2 bargaining representative representing them at the meet-and-confer sessions. The fact that the MoDot bargaining unit may have different individual representing it at the bargaining table, is not controlling in deciding whether or not there is continuity of the bargaining representative. *Service America Corporation*, 307 NLRB at 60. This is especially true where, as in this case, the employees in the bargaining unit retain the right to vote on any MOU negotiated.

It is true that the amendment of certification will lead to some change in union leadership, but the Board does not find the fact significant. Vergil Belfi is the only Local 2 officer who is also an officer of the Missouri State Branch. Additionally, a portion of the MoDot bargaining unit will not be served by Local 2 business agents. However, the fact that the MoDot bargaining unit members may be represented by different union officers and business agents, “is little different from the situation that would have ensued had elections been conducted by [Local 2] and new officers and business agents been elected to represent the Local’s member employees.” *Service America Corporation*, 307 NLRB at 60.

As for Local 2, the amendment of certification will have virtually no effect on it. Local 2 will remain a separate entity with all of the rights guaranteed to an affiliated local union under the constitution of the International Union of Operating Engineers. It will

retain its by-laws and local union officers. Local 2 will also retain its facilities, books, and financial assets. It will also continue to represent other bargaining units.

Lastly, the Board also finds it significant that both Local 2 and the Missouri State Branch are affiliated with the same international union, the International Union of Operating Engineers which must approve their activities. This case is similar to a case where two sister locals are merged and the certification is transferred to the surviving local union. As the National Labor Relations Board noted in *Sullivan Brothers Printers, Inc.*, 317 NLRB at 563, such situations involve less inherent potential for significant change. “The obligations owed to the International union by the employee-members of the ... bargaining unit remain the same....” *Montgomery Ward & Co.*, 188 NLRB 551, 552, 76 L.R.R.M. 1364 (1971). Further, as noted previously in this opinion, the rights guaranteed to the union members under the International Union’s constitution would also remain the same.

Based upon the totality of the circumstances, the Board finds that there is substantial continuity of the bargaining representative in this case.

As for the issue of whether or not the election concerning the amendment of certification was conducted with adequate due process safeguards, the Board finds that the election in this case was conducted with adequate due process safeguards. The union members received adequate notice of the election and had sufficient opportunity to discuss the proposed amendment of certification. Initially, Local 2 compiled a list of union members belonging to the MoDot bargaining unit and used that list in the election process. Prior to the election, business agents from Local 2 visited each member at his or her place of work to discuss the amendment of certification and to deliver a letter requesting the member’s support for the amendment of certification. While these were informal meetings, the meetings were consistent with the business agents’ normal practice of visiting MoDot union members at the “sheds.” See, *Sullivan Brothers*

Printers, Inc., 317 NLRB at 563 (“The fact that no formal meetings were held is not significant, especially in light of the fact that [the president’s] interaction with the remaining Local 139B members was consistent with his established practice.”) However, in this case, regular membership meetings were also held where the members had an opportunity to raise and discuss the issue.

Local 2 also took precautions to ensure the integrity of the balloting process. Following the discussions with the union members regarding the proposed amendment of certification, Local 2 business agents again visited each union member at his or her place of work and delivered a voting packet. Each voting packet contained a ballot and a statement to be signed and dated by the member attesting to the fact that he or she voted in private. Each member could choose to vote immediately and hand the sealed ballot to the business agents or each member could choose to keep the ballot, vote at some later date, and mail the ballot to the Operating Engineers. Each member voted in private and then sealed his or her marked ballot in a blank envelope. Then, each member signed and dated the statement attesting that he or she voted in private. The sealed ballot and signed statement were then sealed in a second envelope and the member signed his or her name in the lower, left-hand corner of this outer envelope. The members’ signatures on the outer envelopes ensured that each member voted only once. A representative of the State Board of Mediation was present when the ballots were opened and counted. First, the outer envelopes in which the ballots were sealed were opened. The ballots, still sealed in the unsigned ballot envelopes, were placed together. The ballots were then opened and the votes tallied. The representative from the State Board of Mediation expressed no concerns regarding the balloting process and the International Union of Operating Engineers has received no complaints concerning the balloting process. Clearly, the election in this case was conducted with adequate due process safeguards.

Finally, the Board finds instructive the case *Duquesene Light Company*, 248 NLRB 1271, 104 L.R.R.M. 1043 (1980). In that case, the International Brotherhood of Electrical Workers (IBEW) was certified as the bargaining representative for nine separate bargaining units of the employer's employees. The first six certifications were issued in 1948. The other certifications were issued in 1949 and 1956. Upon the issuance of the six original certifications in 1948, the IBEW immediately chartered six local unions and assigned the employees in these six bargaining units to the local unions. The employees in the three subsequent certifications were also assigned to the local unions. The local unions bargained jointly with the employer through IBEW System Council U-10 or its predecessor, the Joint Board. The membership of the Council consisted of 12 delegates (the president and vice president of the six local unions). Each delegate had one vote and the Council also had its own officers (president, vice president, secretary-treasurer, and business manager).

In 1979, the IBEW filed a petition to amend the nine certifications to substitute the "International Brotherhood of Electrical Workers (IBEW) Local Unions 140, 142, 144, 147, 148, and 149 of System Council U-10" for the International Brotherhood of Electrical Workers AFL-CIO. The Duquesene Light Company objected to the proposed amendments. Finding continuity in the bargaining relationship, the National Labor Relations Board amended the certifications by substituting the local unions for the International union. *Id.* at 1273. The Board noted that this involved the substitution of the local unions for the International union, and therefore, the affiliation and merger cases cited by the company were not applicable.

Based upon the totality of the circumstances in this case, the Board finds that there is substantial continuity of the bargaining representative and that the election concerning the amendment of certification was conducted with adequate due process

safeguards. Therefore, no question of representation exists in this case. The petition for amendment of certification should be granted.

ORDER

Based upon the foregoing, the Board holds that there is substantial continuity of the bargaining representative and that the election concerning the amendment of certification was conducted with adequate due process safeguards. The Board further holds that no question of representation exists in this case. Accordingly, the certification originally granted to the International Union of Operating Engineers, Local 2 in Case No. 77-015 is hereby amended to read the Missouri State Branch of Operating Engineers.

Signed this 15th day of December, 2000.

STATE BOARD OF MEDIATION

(SEAL)

/s/ John A. Birch
John A. Birch, Chairman

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member

/s/ Lois VanderWaerd
Lois VanderWaerd, Employer Member